IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 98 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARISHCHANDRA AMARSINGH JADEJATHROUGH THE BROTHER

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 98 of 2002

MR NM KAPADIA for Petitioner No. 1

MS PJ DAVAWALA for Respondent No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2002

ORAL JUDGEMENT

The petitioner Harishchandra Amarsingh Jadeja came to be detained by virtue of an order dated 17.3.1994

(Annexure "A") passed by the Additional Chief Secretary to the Government of Gujarat, Home Department, in exercise of powers under Section 3(1) of the COFEPOSA Act.

2. The grounds of detention dated 17.3.1994 (Annexure "B") indicate that the detaining authority found that the activities of the detenu were in contravention of the provisions of Customs Act and he was indulged in smuggling of silver slabs. The authority found that recourse to ordinary law may not be effective and therefore, the petitioner is required to be detained under the provisions of COFEPOSA Act.

3. In the grounds of detention the authority observed that considering the provisions contained under Art. 25(5) of the Constitution of India, to enable the detenu to make an effective representation, a complete set of all the documents considered by the detaining authority while passing the order of detention is supplied to the detenu in the language known to the detenu.

4. The only contention that is raised by learned Advocate for the petitioner is that several of the documents supplied to the detenu by the detaining authority alongwith the grounds of detention are not legible and therefore the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution of India is infringed.

5. Respondents Nos. 2, 3 and 4 are represented by learned AGP Mr. S.S.Patel. Respondent No.1 is represented by Ms. Dawawala. An affidavit in reply is filed on behalf of respondent No.1 - Union of India.

6. Mr. Kapadia has drawn attention of this Court to several documents at pages Nos. 1, 27, 48, 51, 54, 55, 57, 59, 91, 101, 128, 161, 255, 265, 331, 336, 342, 346, 399, 443, 447, 448, 500, 504, 509, 517, 521, 523, 539, 545, 561, 567, 589, 597, 617, 625, 683, 761, 787, 788, 793, 794, 805, 806, 820, 832, 837, 843, 849, 855, 867, 868, 870, 941, 942, 943, 944, 953, 1117, 1120, 1121, 1129, 1163, 1313, 1364, 1373, 1413, 1424, 1433, 1531, 1533, 1547, 1573, 1585, 1595, 1629, 1633, 1635, 1651, 1653, 1654, 1669, 1789 and 1881 and submitted that these documents are not legible. These documents are examined by learned AGP Mr. Patel from the compilation as well as from the record of the State Government. He in all fairness concedes to the fact that the documents are not legible. In this view of the matter, the petition

deserves to be allowed on the ground that supply of illegible documents has infringed the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution of India and his continued detention would therefore be, vitiated.

6. The petition is therefore, allowed. Order of detention dated 17.3.1994 passed by the respondent No. 3 against the detenu is quashed and set aside. Detenu Harishchandra Amarsingh Jadeja be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas